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C O N F I D E N T I A L SECTION 1 OF 4 USUN 0597

LIMDIS

CAPETOWN FOR EMBASSY

E.O. 11652: GDS

TAGS: PFOR, UN, US, WA, SF

SUBJECT: CONSTITUTIONAL DEVELOPMENTS IN NAMIBIA

1. US LAWYERS BURNS AND SCHWARTZ, OF LAW FIRM BURNS AND JACOBY (445 PARK AVENUE, NEW YORK) CALLED ON MISOFF FEBRUARY 17. AS ADDRESSEES ARE AWARE, BURNS AND SCHWARTZ HAVE BEEN ACTIVE IN CONSTITUTIONAL TALKS IN WINDHOEK, AND ARE ADVISING CHIEF KAPUUNO. BURNS SAID THAT HE AND SCHWARTZ, WHOM HE DESCRIBED AS DOING THEIR WORK ON STRICTLY A HUMANITARIAN BASIS, SAID THAT THEY ARE NOW OUT OF POCKET \$45,000, AND ASKED MISOFF TO EXPLORE MEANS WHEREBY THEY COULD RECEIVE SOME FINANCIAL SUPPORT. BURNS GAVE MISOFF FOLLOWING CONSTITUTIONAL PROPOSALS WHICH HE FORESAW BEING ADVANCED AT RENEWED CONSTITUTIONAL CONFERENCE. PROPOSED PRESS RELEASE TO ANNOUNCE THESE PROPOSALS BEING POUCHED DEPARTMENT (IO/UNP - TEFPT). BURNS AND SCHWARTZ ASKED THAT BOTH DOCUMENTS BE HELD CLOSELY.

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CONSTITUTIONAL PROPOSALS OF THE NATIONAL CONVENTION

INTRODUCTION

WITH THE APPROACH OF THE THIRD SESSION OF THE CONSTITUTIONAL CONFERENCE, THE TIME HAS COME TO DIRECT OUR ATTENTION SPECIFICALLY TO PROPOSALS FOR THE FORM OF GOVERNMENT TO BE ADOPTED FOR OUR COUNTRY. WE HAVE CONSIDERED ASPECTS OF THE CONSTITUTIONS OF A NUMBER OF DEMOCRATIC COUNTRIES ON THE AFRICAN CONTINENT AND ELSEWHERE. WE HAVE ALSO CONSIDERED THE PARTICULAR CONDITIONS WHICH EXIST IN OUR OWN COUNTRY. AFTER GIVING CAREFUL CONSIDERATION TO THE MATTER, WE BELIEVE THAT THE FOLLOWING PROPOSALS WILL PROVIDE OUR COUNTRY WITH A DEMOCRATIC GOVERNMENT AND, AT THE SAME TIME, INSURE TO ALL OF THE ELEMENTS OF OUR POPULATION A FAIR SHARE OF PARTICIPATION IN THE GOVERNMENT.

PROPOSALS

1. LEGISLATURE

THE LEGISLATURE SHOULD BE A SINGLE BICAMERAL NATIONAL PARLIAMENT OF 100 MEMBERS CONSISTING OF TWO CHAMBERS OF 50 MEMBERS EACH, ONE CHAMBER BEING ELECTED FROM THE NORTHERN PART OF THE COUNTRY AND THE OTHER CHAMBER BEING ELECTED FROM THE SOUTHERN AND CENTRAL PORTION OF THE COUNTRY, INCLUDING THE KAKOVELD. HOWEVER, NEITHER CHAMBER SHOULD HAVE ANY SEPARATE LEGISLATIVE COMPETENCE ACTING ALONE, BUT THE CONSENT OF BOTH CHAMBERS SHOULD BE REQUIRED FOR THE ENACTMENT OF ANY LAW. IN ADDITION, IN ORDER TO FORM A GOVERNMENT, THE CABINET SHOULD BE REQUIRED TO OBTAIN MAJORITY APPROVAL IN EACH CHAMBER. THE TWO CHAMBERS SHOULD BE ELECTED BY PROPORTIONAL REPRESENTATION, I.E. THE SYSTEM OF VOTING IN WHICH EACH POLITICAL PARTY OR COALITION OF PARTIES PUTS FORWARD A LIST OF CANDIDATES AND RECEIVES A NUMBER OF SEATS IN RATION TO ITS PROPORTION OF THE TOTAL VOTE.

THE REASONS FOR THE ABOVE PROPOSAL ARE AS FOLLOWS:

A. PROPORTIONAL REPRESENTATION

PROPORTIONAL REPRESENTATION IS BEST SUITED TO INSURE EACH POPULATION GROUP FAIR REPRESENTATION, PARTICULARLY IN THE SOUTHERN AND CENTRAL PORTION OF THE COUNTRY WHERE THE POPULATION

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GROUPS DO NOT ALL HAVE CLEARLY DEMARCATED AREAS. MOREOVER, IT AUTOMATICALLY PROVIDES FLEXIBILITY FOR THE TRANSITION, WHICH WE HOPE WILL OCCUR, FROM A POLITICS BASED LARGELY ON ETHNIC GROUPS TO POLITICS BASED MORE ON CONVENTIONAL POLITICAL GROUPINGS. THUS, IN THE FIRST ELECTIONS AFTER INDEPENDENCE, WHEN IT CAN BE ANTICIPATED THAT VOTING MAY STILL BE BASED TO A CONSIDERABLE EXTENT ON ETHNIC LINES, EACH OF THE POPULATION GROUPS WILL BE INSURED A REPRESENTATION IN THE PARLIAMENT

PROPORTIONATE TO ITS VOTE. IN SUBSEQUENT ELECTIONS, AS ETHNIC DIVISIONS BECOME LESS IMPORTANT, THE VARIOUS POLITICAL PARTIES WOULD EACH BE INSURED A FAIR REPRESENTATION. INDEED, EVEN AT THE OUTSET, SINCE THE VOTING WILL BE BASED ON LISTS SPONSORED BY POLITICAL PARTIES, ETHNIC CONSIDERATIONS WILL HAVE A ROLE ONLY TO THE EXTENT THAT THE POLITICAL PARTIES HAVE AN ETHNIC BASE. TO THE EXTENT THAT THE POLITICAL PARTIES BROADEN THEIR BASES AND CEASE TO PRIMARILY REPRESENT ETHNIC GROUPS, THAT FACTOR WILL AUTOMATICALLY HAVE REDUCED SIGNIFICANCE.

ABSENT A SYSTEM OF PROPORTIONAL REPRESENTATION, PROBLEMS OF CONSIDERABLE DELICACY WOULD BE PRESENTED IN DRAWING THE LINES OF SINGLE MEMBER DISTRICTS. IT IS DIFFICULT TO SEE HOW, UNDER SUCH A SYSTEM, IT WOULD BE POSSIBLE TO RECONCILE THE TWO OBJECTIVES OF, ON THE ONE HAND, ASSURING DIFFERENT GROUPS A FAIR REPRESENTATION IN THE PARLIAMENT AND, ON THE OTHER HAND, NOT MAKING ETHNIC CLASSIFICATIONS AN INTEGRAL PART OF THE ELECTORAL LAW.

WHILE THE ABOVE CONSIDERATIONS ARE NOT AS PERTINENT IN THE NORTHERN PART OF THE COUNTRY, WHERE THE VARIOUS AREAS TEND TO BE RELATIVELY HOMOGENOUS IN POPULATION, IT WOULD APPEAR TO BE DESIRABLE, FOR THE SAKE OF UNIFORMITY, TO ADOPT A PROPORTIONAL REPRESENTATIONAL SYSTEM FOR THAT PART OF THE COUNTRY AS WELL.

B. TWO CHAMBERS OF THE PARLIAMENT

THE ESTABLISHMENT OF A BICAMERAL PARLIAMENT IS A SIMPLE AND EFFECTIVE WAY TO INSURE AGAINST DOMINATION OF THE PARLIAMENT BY ANY SINGLE POPULATION GROUP WITHOUT DOING VIOLENCE TO THE PRINCIPLE OF EQUAL ONE-MAN, ONE-VOTE REPRESENTATION. IT SEEMS TO US THAT THIS TYPE OF CHECK AND BALANCE IS NECESSARY, CONFIDENTIAL

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AT LEAST AT THE OUTSET, IN VIEW OF THE STRONG INFLUENCE OF ETHNIC IDENTITIES ON THE POLITICS OF OUR COUNTRY AT THE PRESENT TIME. THE IDEA OF REQUIRING CONCURRENCE OF TWO CHAMBERS OF A LEGISLATURE FOR THE ENACTMENT OF ANY LAWS IS NOT NEW; THIS METHOD IS USED, FOR EXAMPLE, IN THE AMERICAN CONSTITUTION. IN VIEW OF THE CONTRAST BETWEEN PRESENT CONDITIONS AND PAST HISTORY IN THE NORTHERN PART AND THE SOUTHERN-CENTRAL PORTION OF THE COUNTRY, AND THE DIFFERENCE BETWEEN THE KINDS OF LOCAL GOVERNMENTAL INSTITUTIONS PRESENTLY EXISTING IN THEM, IT SEEMS APPROPRIATE TO REQUIRE THAT BOTH CONCUR IN ORDER FOR ANY LAWS TO BE ENACTED. THE PRINCIPLE OF CONSENSUS HAS ALREADY BEEN SUCCESSFULLY UTILIZED IN CONNECTION WITH THE CONSTITUTIONAL CONFERENCE. IT SEEMS TO US THAT THE PRINCIPLE OF CONSENSUS, AT LEAST BETWEEN MAJORITIES IN THE NORTHERN AND SOUTHERN-CENTRAL PORTIONS OF THE COUNTRY SHOULD LIKEWISE

BE REQUIRED FOR LEGISLATION IN THE FUTURE.

WE WISH TO EMPHASIZE THAT BY PROVIDING FOR TWO CHAMBERS ELECTED IN THIS TWO DIFFERENT PARTS OF THE COUNTRY, WE DO NOT IN ANY SENSE CONTEMPLATE A "PARTITION" OF ANY KIND. IT IS NOT OUR INTENTION TO GIVE THE TWO CHAMBERS SEPARATE LEGISLATIVE COMPETENCE FOR THEIR RESPECTIVE AREAS. ON THE CONTRARY, IT IS CONTEMPLATED THAT TOGETHER THEY WILL ACT AS A SINGLE NATIONAL PARLIAMENT AND, WITH THE CONCURRENCE OF BOTH OF THEM, WILL ENACT LAWS OF NATIONWIDE APPLICATION.

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OF COURSE, THERE IS ALWAYS THE DANGER OF DEADLOCK IN THAT CONCEIVABLY THE TWO CHAMBERS MIGHT BE UNABLE TO REACH AGREEMENT ON PARTICULAR ISSUES. HOWEVER, THAT IS A PROBLEM WHICH WILL HAVE TO BE DEALT WITH BY NEGOTIATION AND WORKING TOGETHER. THE AMERICAN SYSTEM OF GOVERNMENT HAS PROVED SUCCESSFUL NOTWITHSTANDING THE NECESSITY FOR CONSENSUS BETWEEN THE TWO HOUSES OF CONGRESS IN THAT COUNTRY. WE ARE CONFIDENT THAT THE DIFFERENT GROUPS IN OUR COUNTRY WILL FIND IT POSSIBLE TO WORK TOGETHER, AND THAT IT IS NOT NECESSARY, IN ORDER TO AVOID ANY POSSIBILITY

OF DEADLOCK, TO ADOPT A UNICAMERAL SYSTEM IN WHICH ONE GROUP
COULD ATTAIN ABSOLUTE DOMINATION.

2. THE EXECUTIVE

WE BELIEVE THAT THE EXECUTIVE SHOULD BE BASED UPON
THE MINISTERIAL CABINET SYSTEM BECAUSE THIS WILL PROVIDE A
BASIS ON WHICH THERE CAN BE REPRESENTATION OF THE VARIOUS
GROUPS IN THE EXECUTIVE DEPARTMENT OF THE GOVERNMENT. AFTER
THE ELECTION OF PARLIAMENT, THE LEADER OF THE LARGEST PARTY
IN EACH CHAMBER ASSUMING HIS PARTY DID NOT CONTROL AN ABSOLUTE
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MAJORITY OF THAT CHAMBER, WOULD BE ENTRUSTED WITH THE RES-
PONSIBILITY OF MAKING ARRANGEMENTS WITH LEADERS OF OTHER
PARTIES WHICH WOULD COMMAND A MAJORITY IN THAT CHAMBER. THE
PRIME MINISTERSHIP WOULD BE OFFERED TO THE PRINCIPAL LEADER
FROM EITHER THE NORTHERN OR SOUTHERN CHAMBER DEPENDING UPON
WHICH OF THEM WAS SUCCESSFUL IN ASSEMBLING THE COALITION
RECEIVING THE LARGEST NUMBER OF VOTES THE APPOINTMENT
OF CABINET MINISTERS WOULD HAVE TO BE MADE WITH THE JOINT
APPROVAL OF THE PRINCIPAL LEADERS OF BOTH CHAMBERS.
THE ROLE OF THE PRESIDENT (NOMINATED BY THE CABINET AND
APPROVED BY BOTH CHAMBERS) WOULD BE TO SEE TO IT THAT
APPROPRIATE PROCEDURES WERE FOLLOWED TO CARRY OUT THESE STEPS
AND TO HELP IN THE NEGOTIATIONS BETWEEN THE PRINCIPAL LEADERS
OF THE RESPECTIVE TWO CHAMBERS.

WE RECOGNIZE THAT THE ABOVE SYSTEM WILL REQUIRE, IN ORDER
TO BE SUCCESSFUL, EXTENSIVE NEGOTIATION AND COOPERATION AMONG
THE VARIOUS POLITICAL LEADERS. HOWEVER, THIS IS TRUE IN ANY
SYSTEM OF DEMOCRATIC GOVERNMENT. WE BELIEVE IT IS DESIRABLE
TO HAVE AN EXECUTIVE CONSISTING OF A CABINET IN WHICH VARIOUS
GROUPS ARE REPRESENTED, AND IT APPEARS TO US THAT THE ABOVE
SYSTEM WILL ACCOMPLISH THIS PURPOSE SATISFACTORILY.

3. THE JUDICIARY

WE BELIEVE THERE SHOULD BE A SYSTEM OF NATIONAL COURTS
CONSISTING OF TRIAL COURTS SITTING IN A NUMBER OF DESIGNATED
CITIES AND TOWNS OF THE COUNTRY, AND A SINGLE SUPREME COURT
SITTING IN THE CAPITAL. WE BELIEVE THAT THESE COURTS SHOULD
BE INDEPENDENT IN THAT THE JUDGES SHOULD BE APPOINTED FOR LIFE
AND BE SUBJECT TO REMOVAL ONLY UPON IMPEACHMENT BY THE LEGISLATURE
FOR CRIMES COMMITTED WHILE IN OFFICE. WE BELIEVE THAT THESE
COURTS, IN ADDITION TO APPLYING THE LAWS, SHOULD ALSO BE UNDER
A DUTY TO APPLY THE PROVISIONS OF THE CONSTITUTION AND THAT,
IF THE COURT FOUND THAT A PARTICULAR LAW OR THE ACT OF A
PARTICULAR PUBLIC OFFICIAL CONTRAVENED A PROVISION OF THE
CONSTITUTION, THAT COURT SHOULD HAVE THE POWER TO ENJOIN THE
ENFORCEMENT OF THAT LAW OR THE FURTHER PERFORMANCE OF SUCH
ACTS BY THE PUBLIC OFFICIAL. IN ANY CASE WHERE SUCH A

CONSTITUTIONAL QUESTION WAS PRESENTED, THERE SHOULD BE A RIGHT OF IMMEDIATE APPEAL, BY EITHER SIDE TO THE SUPREME COURT, WHOSE DECISION WOULD BE FINAL AND BINDING.
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IN ADDITION TO THE NATIONAL COURTS, IT IS DESIRABLE TO HAVE LOCAL MAGISTRATE'S COURTS WITH LIMITED JURISDICTION IN AREAS WHERE THERE ARE LOCAL AS WELL AS NATIONAL LAWS THAT SHOULD BE GIVEN EFFECT. THESE COULD BE ESTABLISHED BY LAW, HOWEVER, RATHER THAN BEING PROVIDED FOR IN THE CONSTITUTION.

4. THE LAW

WE BELIEVE THAT SIMULTANEOUSLY WITH THE ADOPTION OF THE CONSTITUTION, THERE SHOULD ALSO BE ADOPTED A NUMBER OF BASIC LAWS TO MAKE IMMEDIATE CORRECTION OF CERTAIN PRESENTLY EXISTING INEQUITIES APART FROM THOSE IMMEDIATE CHANGES, WE BELIEVE THAT IT IS NECESSARY TO PROVIDE, FOR THE SAKE OF CONTINUITY, THAT EXISTING LAW SHALL CONTINUE IN EFFECT UNTIL CHANGED BY ACT OF THE NEW PARLIAMENT WE ARE AWARE OF A PROPOSAL WHICH HAS BEEN MADE BY OTHERS THAT THE BASIC FOUNDATION OF THE PRESENT LAW, WHICH IS A ROMAN-DUTCH SYSTEM, SHOULD BE CHANGED TO SOME OTHER SYSTEM. WE DO NOT BELIEVE THAT THERE IS TIME TO ACCOMPLISH THE COMPLETE OVERHAUL OF EXISTING LAWS WHICH WOULD BE NECESSARY TO BRING ABOUT THAT CHANGE PRIOR TO ADOPTION OF THE CONSTITUTION. WE WOULD PROPOSE THAT AFTER INDEPENDENCE THE PARLIAMENT APPOINT A SPECIAL COMMITTEE ON CODIFICATION OF LAW WITH AUTHORITY TO RECOMMEND SUCH CHANGES AND TO POINT OUT THE EFFECTS OF THEM.

ANY SUCH RECODIFICATION OF THE LAW WOULD, OF COURSE, BE SUBJECT TO PROVISIONS OF A BILL OF RIGHTS TO BE CONTAINED IN THE CONSTITUTION (WHICH WILL BE MORE FULLY DISCUSSED BELOW) WHICH WOULD PROTECT VESTED LEGAL RIGHTS AND TITLES IN PROPERTY, COMMERCIAL MATTERS, CONTRACT RIGHTS AND PENSION RIGHTS.

5. LOCAL GOVERNMENT.

IN EVERY COUNTRY, THERE ARE CERTAIN GOVERNMENTAL ACTIVITIES WHICH ARE SO LOCAL IN NATURE THAT THEY MUST BE HANDLED BY MUNICIPAL AND DISTRICT OR COUNTRY AUTHORITIES. THIS IS NO LESS TRUE OF OUR COUNTRY THAN IT IS OF OTHER COUNTRIES. WE BELIEVE, THEREFORE, THAT THE CONSTITUTION SHOULD CONTAIN A PROVISION FOR SUCH LOCAL GOVERNMENT. SPECIFIC DETAILS SHOULD BE LEFT FOR A LOCAL GOVERNMENT ACT TO BE ADOPTED BY THE ELECTED PARLIAMENT OF THE COUNTRY. THE CONSTITUTION, HOWEVER, SHOULD CONTAIN THE FOLLOWING GENERAL PROVISIONS FOR MUNICIPAL AND
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DISTRICT COUNCILS.

(I) MUNICIPAL COUNCILS.

THE MUNICIPAL COUNCILS SHOULD BE REORGANIZED IN EACH OF OUR TOWNS AND CITIES SO AS TO ELIMINATE DIFFERENTIATION BETWEEN PORTIONS OF THE SAME TOWN OR CITY BASED UPON COLOR OR CREED. IN EFFECT, THE MUNICIPAL COUNCILS MUST BE CONSOLIDATED WITH TOWNSHIP ADVISORY COUNCILS AND ELECTIONS HELD ON AN EQUAL VOTING RIGHT BASIS FOR EACH MUNICIPAL COUNCIL THROUGHOUT THE COUNTRY USING THE SYSTEM OF PROPORTIONAL REPRESENTATION TO ASSURE A WIDELY BASED REPRESENTATION. WITH THOSE BASIC CHANGES, WE SEE NO OBJECTION TO USING THE PRESENT SYSTEM. THE LEGISLATIVE JURISDICTION OF THE MUNICIPAL COUNCILS SHOULD BE DEFINED IN THE LOCAL GOVERNMENT ACT AND BE SUBJECT TO REVISION BY THE NATIONAL PARLIAMENT.

(II) DISTRICT COUNCILS.

THE RESPONSIBILITY OF THE DISTRICT COUNCILS SHOULD BE LIMITED TO LOCAL MATTERS THAT CANNOT BE CONVENIENTLY HANDLED BY THE MUNICIPAL COUNCILS. WE SUGGEST THE ESTABLISHMENT OF DISTRICT COUNCILS FOR EIGHT DISTRICTS AS FOLLOWS:
DISTRICT A: AREA PRESENTLY KNOWN AS SOUTHERN PART OF NAMALAND.
DISTRICT B: AREA PRESENTLY KNOWN AS REHEBOTH GEBEIT.
DISTRICT C: AREA PRESENTLY KNOWN AS OVAMBOLAND.
DISTRICT D: AREA PRESENTLY KNOWN AS THE CAPRIVI.
DISTRICT E: THE KAKOVELD TOGETHER WITH AN AREA EXTENDING SOUTH EASTWARD THROUGH THE ETOSHAPAN TO THE NORTHEASTERN PORTION OF THE COUNTRY IMMEDIATELY BELOW THE AREA KNOWN AS KAVANGOLAND, WITH WESTERN BORDER TO DISTRICT F AND THE SOUTHERN BORDER SOME 50 MILES NORTH OF OKAHANDJA.
DISTRICT F: AREA PRESENTLY KNOWN AS DAMARALAND.
DISTRICT G: AREA PRESENTLY KNOWN AS KAVANGOLAND.
DISTRICT H: AREA WITH NORTHERN BORDER SOME 50 MILES NORTH OF OKAHANDJA AND THE SOUTHERN BORDER OF DISTRICT F AND STRETCHING TO THE SEA ON THE WEST AND TO THE BORDERS OF DISTRICTS A AND B IN THE SOUTH.

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WE RECOGNIZE THE FACT THAT SOME OF THE NEW DISTRICTS
ALREADY HAVE FUNCTIONING ELECTED BODIES, HOWEVER, THERE ACTUAL
POWERS AT PRESENT ARE FAR SHORT OF EVEN THE LIMITED POWERS WHICH
IT IS GENERALLY RECOGNIZED A LOCAL GOVERNMENT MUST HAVE. THE
DISTRICT COUNCILS SHOULD BECOME AN EFFECTIVE MEANS BY WHICH THE
PEOPLE CAN HAVE A JUST SAY IN THE RUNNING OF THEIR AFFAIRS ON
THE LOCAL LEVEL.

THE NEW LOCAL GOVERNMENT ACT WILL EFFECTIVELY ASSURE
OUR PEOPLE A SAY IN THEIR LOCAL AFFAIRS, BY CLEARLY DEFINING THE
RIGHTS AND RESPONSIBILITIES OF LOCAL GOVERNMENTS AND BY ENSURING
THAT THERE WILL BE DEMOCRATIC ELECTIONS OF DISTRICT AND MUNICIPAL
REPRESENTATIVES. WE FIRMLY BELIEVE, HOWEVER, THAT THE CENTRAL
GOVERNMENT MUST FIRST BE CLEARLY DEFINED IN THE CONSTITUTION
AND FULLY ESTABLISHED IN PRACTICE BEFORE ANY STEPS ARE TAKEN
WITH RESPECT TO THE CREATION OF NEW DISTRICT COUNCILS. BUT
THERE IS NO REASON NOT TO PROCEED WITHOUT DELAY WITH THE NECESSARY
REFORMS TO ALTER THE STRUCTURE OF THE PRESENT MUNICIPAL COUNCILS
TO MAKE THEM TRULY DEMOCRATIC AND NON-DISCRIMINATORY BODIES AS
DESCRIBED EARLIER.

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A CAREFUL REVIEW OF THE SUBJECTS CUSTOMARILY ENTRUSTED
TO LOCAL GOVERNMENTS SHOULD BE MADE, AND THESE SUBJECTS SHOULD
BE PLACED WITHIN THE COMPETENCE OF THE EXISTING AND NEW DISTRICT
AND MUNICIPAL COUNCILS. HOWEVER, WHILE GENERAL PROVISIONS DEFIN-
ING LOCAL GOVERNMENT SHOULD BE CONTAINED IN THE CONSTITUTION, WE
BELIEVE THERE DETAILED IMPLEMENTATION SHOULD BE LEFT TO A LOCAL
GOVERNMENT ACT WHICH SHOULD BE SUBJECT TO REVISION BY LAWS
ADOPTED BY BOTH CHAMBERS OF THE NATIONAL LEGISLATURE FROM
TIME TO TIME MODIFYING THE POWERS OF LOCAL GOVERNMENT
IN THE LIGHT OF EXPERIENCE.

6. PROTECTION OF HISTORICAL AND CULTURAL HERITAGE.

THROUGHOUT THE COUNTRY, THE POPULATION CONSISTS OF MEMBERS OF DIFFERENT ETHNIC GROUPS LIVING AT TIMES IN CLEARLY DEFINED GROUPS AND AT TIMES SIDE BY SIDE IN MIXED COMMUNITIES. IT APPEARS TO US THAT IT IS DESIRABLE AND NECESSARY, AND WOULD BE IN ACCORDANCE WITH THE WISHES OF THE PEOPLE, TO PROVIDE A MACHINERY THROUGH WHICH THE ETHNIC GROUPS, AS SUCH, MIGHT HAVE A VOICE IN THE WELFARE OF ITS PEOPLE AS TO CERTAIN MATTERS IRRESPECTIVE OF LOCALITY IN WHICH MEMBERS OF SUCH ETHNIC GROUP RESIDE.

WITH THESE CONSIDERATIONS IN MIND, WE BELIEVE IT WOULD BE APPROPRIATE FOR THE CONSTITUTION TO MAKE A PROVISION FOR THE SELECTION OF ETHNIC AND/OR CHIEF'S COUNCILS WITH DEFINED RIGHTS AND RESPONSIBILITIES FOR THE PROMOTION AND PROTECTION OF THE INTERESTS OF THE MEMBERS OF THEIR RESPECTIVE GROUPS WITH RESPECT TO CERTAIN MATTERS, SUCH AS:

(I) THE PRESERVATION OF THE HISTORY OF THE GROUPS, BOTH IN WRITTEN FORM AND THE INCLUSION OF ITS HISTORY IN TRUTHFUL DETAILS INTO THE SCHOOL-BOOKS TEACHING NATIONAL HISTORY TO PRESENT AND FUTURE GENERATIONS.

(II) THE PROVISION OF GOVERNMENT FINANCIAL ASSISTANCE IN CONNECTION WITH ECONOMIC DEVELOPMENT, HOUSING, EDUCATION, SOCIAL SERVICES AND PENSIONS TO INDIVIDUAL MEMBERS AND/OR LOCATIONS MOSTLY POPULATED BY THE MEMBERS OF THE GROUP.

(III) THE PRESERVATION OF CULTURAL HERITAGE OF THE GROUP AND GOVERNMENT FINANCIAL ASSISTANCE THEREOF.

(IV) THE IMPLEMENTATION OF GOVERNMENT MEASURES, INCLUDING FINANCIAL ASSISTANCE, FOR THE PRESERVATION OF THE LANGUAGE OF THE GROUP BOTH BY THE ENCOURAGEMENT FOR THE CREATION OF WRITTEN RECORDS AND THE TEACHING OF

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THE LANGUAGE IN SCHOOLS.

(V) THE PROVISION OF GOVERNMENT FINANCIAL ASSISTANCE FOR THE ESTABLISHMENT OF WRITTEN RECORDS OF THE GROUP'S HISTORY AND CULTURE.

(VI) THE PROVISION OF GOVERNMENT FINANCIAL ASSISTANCE FOR THE ESTABLISHMENT OF MUSEUMS OR SECTIONS OF MUSEUMS FOR THE PRESERVATION OF THE GROUP'S HISTORICAL AND RELIGIOUS RELICS OF THE PAST, PRESENT AND FUTURE.

(VII) THE PROVISION OF GOVERNMENT FINANCIAL ASSISTANCE FOR THE PRESERVATION AND/OR RESTORATION OF HISTORICAL MONUMENTS AND/OR PLACES OF THE GROUP. IN OTHER WORDS, THE COUNCILS WOULD NOT HAVE JURISDICTION OVER ANY PARTICULAR GEOGRAPHICAL AREA. ON THE CONTRARY, THEIR ROLE WOULD BE LIMITED TO ASSISTING MEMBERS OF THE VARIOUS POPULATION GROUPS IN THEIR DEALINGS WITH THE GOVERNMENT AND SUPERVISING CERTAIN PHASES OF THE SERVICES RENDERED BY THE

GOVERNMENT TO MEMBERS OF THEIR GROUPS.
IN DECIDING UPON A METHOD FOR THE ELECTION OF SUCH COUNCILS, WE WOULD UTILIZE, WHERE THEY EXIST, THE TRADITIONAL MACHINERY PRESENTLY IN USE, SUCH AS THE HEREROS' CHIEFS' COUNCIL, COLOURED COUNCIL, ETC. AS TO GROUPS WHICH DO NOT PRESENTLY HAVE SUCH A TRADITIONAL MACHINERY, A SIMPLE METHOD COULD BE TO PROVIDE FOR THE ELECTION OF COUNCILS AT A SPECIAL TIME AND SPECIAL PLACES BASED UPON A SPECIAL, SEPARATE ROLE OF VOTERS ON WHICH MEMBERS OF SUCH ETHNIC GROUP WOULD HAVE THE RIGHT, IF THEY WISHED, TO BE ENROLLED. WE MAKE THE FOREGOING PROPOSAL NOT BECAUSE WE ARE IN FAVOR OF PRESERVING, CONTINUING OR INCREASING THE ETHNIC DIVISION OF OUR COUNTRY, BUT ONLY IN RECOGNITION OF THE FACT THAT A DEGREE OF SUCH ETHNIC IDENTITY ALREADY EXISTS. IN THE FUTURE, IF ETHNIC IDENTITIES BECOME LESS DISTINCT OR DISAPPEAR, THIS SPECIAL MACHINERY COULD BE DISMANTLED. HOWEVER, IT SEEMS TO US THAT IN THE LIGHT OF THE PRESENT CONDITIONS IN THE COUNTRY, SUCH MACHINERY WOULD SERVE A USEFUL AND NECESSARY PURPOSE.

7. BILL OF RIGHTS

THE CONSTITUTION SHOULD CONTAIN A BILL OF RIGHTS PROVIDING FULL GUARANTEES OF FREEDOM OF EXPRESSION, FREEDOM FROM ARBITRARY DETENTION, FREEDOM OF MOVEMENT, EQUALITY BEFORE THE LAW, PROTECTION OF PROPERTY FROM CONFISCATION AND ALL

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OTHER GENERALLY RECOGNIZED HUMAN RIGHTS AND FREEDOMS. THESE GUARANTEES SHOULD HAVE THE FORCE OF LAW AND SHOULD BE ENFORCE-
ABLE BY THE COURTS AT THE SUIT OF THE PRIVATE CITIZENS. THE AUTHORITY OF THE COURTS SHOULD INCLUDE THE POWER TO PROHIBIT THE GOVERNMENT OR GOVERNMENT OFFICERS FROM VIOLATING THESE GUARANTEES.

HOWEVER, STEPS MUST BE TAKEN TO ENSURE THAT THE BILL OF RIGHTS CAN WITHSTAND THE STRONG DISSATISFACTION OF THE POPULATION WITH ACTIONS TAKEN BY FORCE IN THE PAST DIS-
REGARDING RIGHTS TO PROPERTY AND PROTECTION OF PROPERTY FROM CONFISCATION. IN THIS CONNECTION, WE DRAW ATTENTION TO THE FACT THAT DURING THE PERIOD OF GERMAN ADMINISTRATION, SOME LANDS WERE TAKEN COMPULSORILY FROM THE INDIGENOUS POPULATION AND DISTRIBUTED TO SETTLERS. SOUTH AFRICA HAS PERMITTED THESE

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TO CONTINUE TO BE HELD BY PERSONS WHOSE CLAIMS TO OWNERSHIP
DEPEND ON THOSE COMPULSORY TRANSFERS, AND ADDITIONAL COMPULSORY
TAKINGS OF LAND FROM THE INDIGENOUS POPULATION HAVE OCCURRED
DURING THE PERIOD OF SOUTH AFRICAN ADMINISTRATION.
THEREFORE, WE PROPOSE THAT, AS PART OF THE COMPLETION
AND FINAL ADOPTION OF THE CONSTITUTION AND THE BILL OF RIGHTS
THEREIN, A SETTLEMENT BE NEGOTIATED AND ARRIVED AT BY MUTUAL
AGREEMENT BETWEEN THE PRESENT HOLDERS OF THE LANDS AND THE
SOUTH AFRICAN GOVERNMENT ON THE ONE HAND AND THE POPULATION
GROUP WHICH SUFFERED THE DEPRIVATION ON THE OTHER HAND, PRO-
VIDING FOR THE RETURN AND/OR THE PAYING OF COMPENSATION WITH
RESPECT TO THESE LANDS. THE CONSTITUTIONAL CONFERENCE SHOULD
ACT IN AN ADVISORY AND SUPERVISORY CAPACITY TO THESE NEGOTIATIONS.
WE PROPOSE THAT THE COMPENSATION DECIDED UPON SHOULD BE PAID
BY THE SOUTH AFRICAN GOVERNMENT EITHER TO THE PRESENT HOLDERS
OF THE LANDS IF THEY ARE RETURNED TO THEIR ORIGINAL OWNERS
OR THE POPULATION GROUP WHO ORIGINALLY SUFFERED THE
DEPRIVATION. THE SETTLEMENT REACHED SHOULD BE REFLECTED IN THE
CONSTITUTION WITH SUITABLE GUARANTEES AS TO PERMANENCE.
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IN THE EVENT THAT A SETTLEMENT CANNOT BE REACHED BY
MUTUAL AGREEMENT, WE PROPOSE THAT THERE BE BINDING ARBITRATION
BEFORE AN IMPARTIAL TRIBUNAL AND THAT THIS DECISION SHOULD

BE BINDING UPON ALL PARTIES. WE WOULD REGARD AS AN ACCEPTABLE IMPARTIAL TRIBUNAL THE PRIVY COUNCIL OF HER MAJESTY THE QUEEN OF ENGLAND. WE BELIEVE THAT THE INJUSTICES OF THE PAST MUST BE FULLY SETTLED BEFORE WE CAN PROVIDE A LASTING GUARANTEE FOR THE OWNERS OF PROPERTIES WHICH HAVE BEEN TAKEN BY FORCE FROM A FELLOW CITIZEN OF THEIR COUNTRY.

8. CITIZENSHIP

CITIZENSHIP SHOULD BE GRANTED TO ALL PERSONS WHO WERE BORN IN THE COUNTRY OR WHO HAVE RESIDED THERE FOR AT LEAST THREE YEARS. PERSONS HOLDING FOREIGN CITIZENSHIP, BUT HAVING RESIDENTIAL QUALIFICATIONS SHOULD BE PERMITTED TO RETAIN DUAL NATIONALITY FOR A PERIOD OF THREE YEARS, AT THE END OF WHICH PERIOD THEY SHOULD HAVE THE RIGHT TO CHOOSE BETWEEN REMAINING FOREIGN NATIONALS OR REMAINING CITIZENS OF OUR COUNTRY.

9. BOUNDARIES

THE TERRITORY OF OUR COUNTRY SHOULD INCLUDE NOT ONLY WHAT IS PRESENTLY KNOWN AS SOUTH WEST AFRICA BUT ALSO THE WALVIS BAY AREA AS WELL AS THE OFFSHORE ISLANDS IMMEDIATELY OPPOSITE LUDERITZ.

AS TO BOTH THESE TERRITORIES THE DE FACTO SITUATION AT THE PRESENT TIME IS THAT THEY ARE ADMINISTERED AS AND INTEGRAL PART OF SOUTH WEST AFRICA. JUST AS WE HAVE RECOGNIZED SOUTH AFRICA'S DEFACTO PRESENCE IN SOUTH WEST AFRICA IN THAT WE ARE DEALING WITH THE PRESENT ADMINISTRATION IN THIS CONFERENCE, SO WE BELIEVE SOUTH AFRICA MUST RECOGNIZE THE DE FACTO SITUATION WHICH EXISTS AS TO THESE TERRITORIES AND MUST TREAT THEM AS AN INTEGRAL PART OF SOUTH WEST AFRICA. WITH INDEPENDENCE, THE DE FACTO STATUS OF THESE TERRITORIES SHOULD BECOME DE JURE, AND THEY SHOULD BE A PERMANENT PART OF SOUTH WEST AFRICA.

THE SOUTHERN BOUNDARY OF THE COUNTRY SHOULD BE THE MIDDLE OF THE ORANGE RIVER AND NOT THE HIGH WATER MARK ON THE NORTH BANK OF THE RIVER.

10. ADDITIONAL PROVISIONS

THE FOREGOING PROPOSALS ARE NOT INTENDED TO BE ALL INCLUSIVE. CONSIDERATION SHOULD ALSO BE GIVEN, FOR EXAMPLE, TO THE ADDITION OF PROVISIONS FOR ESTABLISHING A PUBLIC SERVICE

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COMMISSION TO PROMULGATE RULES FOR THE HIRING AND JOB SECURITY OF PUBLIC EMPLOYEES. ATTENTION COULD ALSO BE GIVEN TO QUESTIONS OF FOREIGN RELATIONS, INCLUDING THE POSSIBILITY OF MEMBERSHIP IN THE BRITISH COMMONWEALTH. DETAILED PROVISIONS COULD ALSO BE INCLUDED COVERING THE MANNER IN WHICH THE BUDGET IS TO BE FORMULATED, AND AS TO HOW TAXES ARE TO BE IMPOSED, INCLUDING THE QUESTION OF WHETHER THERE SHOULD BE ANY LOCAL GOVERNMENT TAXING POWER IN ADDITION TO THE NATIONAL TAXING POWER WHICH WOULD BE LODGED WITH THE NATIONAL PARLIAMENT. SOME OF THESE

ADDITIONAL MATTERS COULD, PERHAPS, BE DEALT WITH IN A LEGISLATION ADOPTED BY THE PARLIAMENT IMMEDIATELY AFTER INDEPENDENCE RATHER THAN IN THE CONSTITUTION ITSELF.

IT IS BELIEVED, HOWEVER, THAT THE FOREGOING PROPOSALS ARE SUFFICIENT TO PROVIDE A BASIS ON WHICH THE CONFERENCE CAN CONSIDER, DISCUSS AND DECIDE UPON THE CONSTITUTIONAL NEEDS OF OUR COUNTRY AND ARRIVE AT A DECISION AS TO THE SUBSTANCE OF THE CONSTITUTION WHICH SHOULD BE SUBMITTED TO THE PEOPLE FOR APPROVAL.

11. IMPLEMENTATION.

IT IS ESSENTIAL THAT THE FOREGOING PROPOSALS AND THOSE SUBMITTED BY OTHERS, BE DELIBERATED AND ACTED UPON WITHOUT DELAY. WE THEREFORE, DEEM IT IMPERATIVE THAT THE REPUBLIC OF SOUTH AFRICA TAKE THE FOLLOWING ACTIONS:

(I) THE GOVERNMENT OF SOUTH AFRICA MUST GIVE LEGAL EFFECT TO ITS RECOGNITION OF THE CONFERENCE AS THE TRULY REPRESENTATIVE BODY OF THE OVERWHELMING MAJORITY OF THE PEOPLE OF SOUTH WEST AFRICA, CHARGED WITH THE RESPONSIBILITY OF PREPARING A PROPOSED CONSTITUTION FOR NAMIBIA.

(II) THE CONFERENCE MUST BE EMPOWERED TO ARRANGE WITHIN ONE YEAR FOR THE DEMOCRATIC ELECTION OF A CONSTITUTENT ASSEMBLY TO CONSIDER AND ACT UPON THE CONFERENCE'S PROPOSALS FOR A CONSTITUTION. SUCH ELECTION, OF COURSE, MUST BE UNDER INTERNATIONAL OBSERVATION.

(III) ON AN INTERIM BASIS, PENDING THE ELECTION, THE GOVERNMENT OF SOUTH AFRICA MUST CONFER UPON THE CONFERENCE LEGISLATIVE COMPETENCE OVER SOUTH WEST AFRICA SO THAT IT WILL HAVE THE LEGAL POWER TO ENACT, BY CONSENSUS OF ITS MEMBERS, THE LAWS WHICH ARE URGENTLY REQUIRED TO REMEDY INJUSTICES REQUIRING IMMEDIATE ATTENTION.

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(IV) THE CURRENT BUDGET OF THE COUNTRY FOR THE YEAR SHALL ALLOCATE SUFFICIENT FUNDS TO THE CONFERENCE TO ENABLE IT TO CARRY ON ITS WORK AND ARRANGE FOR A PEACEFUL AND ORDERLY TRANSFER OF POWER.

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